IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

(SUO MOTU) CONTEMPT PETITION NO.163 OF 2001
IN
WRIT PETITION NO.1567 OF 2001

High Court on its own motion

V/s.

The Collector District Kolhapur and Election Officer Kolhapur. ..Contemnor/-Respondent.

Mr.A.H.Palekar for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 22, 2006.

P.C. :

1. Heard learned AGP. Perused the affidavit filed by the then Collector, Kolhapur, Rajgopal Devara, to whom show cause notice was issued for initiating contempt action in terms of order dated 19th March, 2001. The backdrop in which the said show cause notice came to be issued is noted in the said order. It is seen that after the Writ Petition was disposed of by this Court in terms of order dated February 14, 2001 the Society passed resolution and communicated the same to the Collector for necessary action. It appears that the collector rejected the said nomination on the reasoning that it was received after limitation. This court on 19th March, 2001 therefore, issued show cause notice to the collector

by recording following reasons.

> ". The order is of 14th February, 2001. Considering the facts of the that case, direction was given to Respondent No.1 to change a nominee, if it was moved within seven days from 14th February, 2001. A change was communicated, which was received on 20th February, 2001. It is pointed out that the Order of this Court was also communicated to Respondent No.1. Inspite of that proposal was rejected on the ground of limitation.
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> 2. Once there was an order of this Court which was passed after hearing amongst others the Additional Government Pleader. Respondent No.1 was bound to follow that order or if aggrieved an appeal could have been preferred against the said order. Respondent No.1 was duty bound to comply with that order. Prima facie, the record shows that he has failed to comply with the said order. In the light of that office to issue notice to Respondent No.1 as to why he should not be punished for the contempt of the order of this Court.
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> 3. Returnable on 2nd April, 2001.
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> . All Authorities concerned to act on the ordinary copy of this order duly authenticated by P.A.
>
> . P.A.to give ordinary copy of this order to the parties concerned.
>
> . Certified copy expedited."

The explanation offered by the then collector on affidavit is as follows:

> ". In the present case, the petitioner society applied for inclusion of name of its representation in final voter list on 20-2-2001. According to rule 6(5), whose

> name is not included in the final voter list may apply within 15 days from the date of display of final voter list. The final Voter List was published on 4-12-2000 and last date for inclusion of name as per Rule 6(5) was 19-12-2000. The time limit prescribed under the above rule was over. In the High Court judgment dt.14.2.2001 in para 2 mentioned that it is pointed out that today is last date for inclusion of name of nominee. This information is incorrect. As per rule 5(2) the last date for inclusion of name of nominee was 6-2-2001. The Hon.High Court's order dated 14-2-2001 clearly shows that the society pass the resolution, which the Collector consider that resolution and thereafter pass order either including or excluding the name of such nominee from the voter list. The Hon.High Court had not given a specific order regarding inclusion of name of the nominee of the society in the final Voter List and hence the application dated 20-2-2001 was rejected."(emphasis supplied)

2. The aforesaid explanation is unacceptable. For,it was not open to the Collector to reject the nomination on the ground that the same was presented on 20-2-2001 after the expiry of 15 days from the display of final voter list. The collector has assumed that the order passed by the High Court on 14th February, 2001 is founded on the incorrect statement made before the Court. Even if it was an incorrect order, it is well settled that the party to the said order cannot ignore the same, till it is set aside by the superior court or recalled by the same court for the reasons available in law. As the order dated 14th February, 2001 was operating, the

collector had no business to refuse to entertain the nomination which was required to be processed in terms of the said order. Obviously therefore, the act of collector cannot be sustained. However, in the peculiar facts of the present case, while giving benefit to the said Collector I refrain from precipitating the matter with the hope that in future the said officer shall not assume to himself that the order passed by the court is illegal and was not bound to respect the same on that count. Petition is disposed of on the above terms. Show cause notice is discharged.

3. Copy of the order be sent to the Secretary, General Administration Department as well as Co-operation department for issuing appropriate instructions to the concerned officer.